

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
NORTHWESTERN DIVISION**

XTO Energy, Inc.,)	ORDER OF DISMISSAL
)	
Plaintiff,)	
vs.)	
)	Case No. 4:09-cv-066
Kenneth Schmidt,)	
)	
Defendant.)	

On October 15, 2009, the plaintiff, XTO Energy, Inc., filed a complaint and a motion for a temporary restraining order against the defendant, Kenneth Schmidt. See Docket Nos. 1 and 2. On October 20, 2009, the Court granted the motion and set a show cause hearing for November 2, 2009, and the temporary restraining order was ultimately extended until November 9, 2009. See Docket Nos. 5 and 6. On October 28, 2009, Schmidt filed a letter requesting damages from XTO Energy. See Docket No. 9. On November 2, 2009, the Court granted a preliminary injunction against Schmidt to allow XTO Energy to conduct geophysical exploration on Schmidt's property. See Docket No. 11. On January 4, 2010, Schmidt again filed a letter requesting damages from XTO Energy. See Docket No. 15. On January 19, 2010, XTO Energy filed a "Notice of Dismissal Without Prejudice." See Docket No. 18. Schmidt has failed to file an answer in this case.

On April 16, 2010, Magistrate Judge Charles S. Miller, Jr. held a telephonic status conference with the parties. During the status conference, the parties stipulated to the following:

- (1) that the notice of dismissal entered by the plaintiff would be withdrawn; and
- (2) that this action may now be dismissed without further prejudice to either party and specifically without prejudice to Mr. Schmidt being able to commence against XTO Energy an action to recover any damages that he might be entitled to, assuming he does it on a

timely basis; and that XTO Energy would be able to assert any defenses that it otherwise would have to such an action, but would not assert a defense that Mr. Schmidt failed to comply with – he failed to answer in this case.

The Court **ADOPTS** the stipulation of the parties. The Court **ORDERS** that the “Notice of Dismissal Without Prejudice” (Docket No. 18) **BE WITHDRAWN**; that the action be **DISMISSED WITHOUT PREJUDICE** to either party, and specifically without prejudice to Schmidt being able to commence an action against XTO Energy to recover any damages that he may be entitled to, assuming he does so on a timely basis; and that XTO Energy would be able to assert any defenses that it otherwise have to such an action, but would not assert a defense that Schmidt failed to file an answer in this case.

IT IS SO ORDERED.

Dated this 16th day of April, 2010.

/s/ Daniel L. Hovland

Daniel L. Hovland, District Judge
United States District Court